

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4682

To guarantee the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women in spectrum auctions.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 29, 1994

Mr. RICHARDSON (for himself, Mrs. COLLINS of Illinois, and Mrs. SCHROEDER) introduced the following bill; which was referred to the Committee on Energy and Commerce

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## A BILL

To guarantee the participation of small businesses, rural telephone companies, and businesses owned by members of minority groups and women in spectrum auctions.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Communications Op-  
5       portunity Act of 1994”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

8               (1) Section 309(j)(3) of the Communications  
9       Act of 1934 requires the Federal Communications

1 Commission to disseminate licenses among a wide  
2 variety of applicants, including small businesses,  
3 rural telephone companies, and businesses owned by  
4 members of minority groups and women (hereinafter  
5 in this Act referred to as “designated entities”).

6 (2) Section 309(j)(4) of such Act requires the  
7 Commission to ensure that small businesses, rural  
8 telephone companies, and businesses owned by mi-  
9 nority groups and women are given the opportunity  
10 to participate in the provision of spectrum-based  
11 services, and, for such purposes, requires the Com-  
12 mission to consider the use of tax certificates, bid-  
13 ding preferences, and other procedures.

14 (3) License set-asides and installment payments  
15 are additional policy tools available to the Commis-  
16 sion for ensuring that licenses are disseminated to  
17 designated entities.

18 (4) Designated entities are greatly  
19 underrepresented in all of the telecommunications  
20 industries. In particular, businesses owned by mem-  
21 bers of minority groups and women suffer numerous  
22 barriers to participating in the provision of tele-  
23 communications services. Market entry is greatly  
24 complicated by historically low participation and by

1 a lack of access to capital markets for businesses  
2 owned by members of minority groups and women.

3 (5) Because the electromagnetic spectrum is a  
4 public resource and because minorities and women  
5 face discrimination and other barriers to entering  
6 the telecommunication market, there is a compelling  
7 public interest to promote diversity in the participa-  
8 tion in the telecommunications industries in order to  
9 promote the goals of competitive prices for services,  
10 service innovation, full employment, and diversity of  
11 opinions and viewpoints in public discourse.

12 (6) Because of the extremely capital intensive  
13 nature of developing and deploying systems in new  
14 telecommunications industries, and the ability of  
15 large corporations to amass financial resources  
16 swiftly and efficiently, allocation of the electro-  
17 magnetic spectrum under a purely competitive ap-  
18 proach will greatly hinder access to licenses by des-  
19 ignated entities, especially business owned by mem-  
20 bers of minority groups and women, wanting to pro-  
21 vide telecommunications services. Without the use of  
22 certain bidding preferences, in particular set-asides,  
23 business owned by members of minority groups and  
24 women will not make significant progress in partici-  
25 pating in the telecommunications industries.

1 **SEC. 3. PARTICIPATION BY DESIGNATED ENTITIES.**

2 (a) GENERAL REQUIREMENT.—The Commission  
3 shall ensure the participation of small businesses, rural  
4 telephone companies, and businesses owned by members  
5 of minority groups and women in the provision of spec-  
6 trum-based services, particularly through licenses con-  
7 trolled by them.

8 (b) LICENSING PLAN.—

9 (1) REQUIREMENTS APPLICABLE TO COMPETI-  
10 TIVE BIDDING.—If the Commission decides to use  
11 competitive bidding to grant 3 or more licenses  
12 which serve a market, the Commission shall reserve  
13 at least one license, of up to 30 megahertz, for bid-  
14 ding by designated entities only. If more than 6 li-  
15 censes serving a market are to be conferred through  
16 competitive bidding, the Commission shall reserve at  
17 least 2 licenses, one of which is at least 30 mega-  
18 hertz, for bidding by designated entities only. In ad-  
19 dition, the Commission shall provide bidding pref-  
20 erences to designated entities which choose to bid on  
21 other licenses, but may not substitute such pref-  
22 erences for the license reservation required in this  
23 paragraph, or provide such reservations to entities  
24 which are not designated entities.

25 (2) ADDITIONAL REQUIREMENTS.—To the max-  
26 imum extent feasible, the Commission shall equalize

1 licenses to be bid on initially by size and area, and  
2 shall not discriminate between designated entity li-  
3 censes and other licenses.

4 (3) ACCESS TO CAPITAL.—In developing rules  
5 regarding other licenses and licensees for the same  
6 service, the Commission shall take into account the  
7 impact of those rules on the competitiveness and ac-  
8 cess to financing of designated entities. To the ex-  
9 tent possible the Commission should provide incen-  
10 tives for nondesignated entities to invest as minority  
11 equity holders in designated entity concerns. To the  
12 extent possible, the Commission shall ensure that its  
13 preferences are not abused.

14 (4) SIMPLE PROCEDURES REQUIRED.—Particu-  
15 larly for rural areas, the Commission shall provide  
16 a simple regulatory approval process to allow and  
17 encourage voluntary partitioning of licenses between  
18 overall license holders and rural telephone companies  
19 and others which wish to serve smaller portions of  
20 the license area.

21 (c) COMPETITIVE BIDDING AND BID FINANCING.—

22 (1) CONSIDERATIONS REQUIRED.—The Com-  
23 mission shall carefully consider the practical effect of  
24 its auction and related requirements on designated  
25 entities, and shall seek wherever possible to remove

1 or lessen regulatory and business barriers to success-  
2 ful participation by designated entities, and to pro-  
3 vide flexibility to designated entities. This consider-  
4 ation shall include—

5 (A) lower application fees;

6 (B) the initial payment or downpayment  
7 shall be no more than 10 percent of a winning  
8 bid for successful designated entity bidders; and

9 (C) installment payments of the balance  
10 due over the term of the license.

11 (2) FLEXIBILITY.—The Commission shall ex-  
12 tend similar flexibility to requirements of financial  
13 capability for designated entities which have won li-  
14 censes. Good faith efforts to pursue financing and  
15 construction shall meet the requirements of title II  
16 and regulations enacted pursuant thereto.

17 (3) ADDITIONAL METHODS.—The Commission  
18 shall consider additional methods to maximize effec-  
19 tive participation of designated entities in auctions  
20 and the resulting marketplace. These methods may  
21 include devices such as tax certificates.

22 (d) RULES APPLYING TO DESIGNATED ENTITIES  
23 WITH LICENSES.—

24 (1) WAIVERS.—In general, designated entities  
25 should be subject to the same rules as all other par-

1       ties. The Commission shall institute a waiver process  
2       whereby a designated entity licensee can dem-  
3       onstrate why the public interest will be served by  
4       granting flexibility to such an entity.

5           (2) TRANSFERS.—Designated entity licensees  
6       may freely transfer a license to a third party, which  
7       qualifies as a designated entity, without additional  
8       financial penalties or obligations. A designated entity  
9       may transfer its license to a nondesignated entity if  
10      the parties comply with the requirements of para-  
11      graph (3).

12          (3) PAYMENTS BY TRANSFEREES.—Any party  
13      which is not a designated entity but which buys a  
14      controlling interest in a license from a designated  
15      entity must pay the government the balance due of  
16      the spectrum bid immediately. Until 3 years after  
17      award, a nondesignated entity must pay, in addition,  
18      the difference, if any, between the amount initially  
19      bid by the designated entity and the market price  
20      for such licenses, based on the average of  
21      nondesignated entity bids for similar licenses in that  
22      market. The Commission shall establish a formula  
23      for calculating this difference taking into consider-  
24      ation any bidding credits.

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